

# WiseHealth Partner Agreement

**Updated:** 17September09

This Agreement contains the complete terms and conditions that apply to an individual's or entity's participation in the WiseHealth Partner Program (the "**Program**"). As used in this Agreement, "**we**", "**us**", or "**our**" means WiseHealth, Inc. and "**you**" means the applicant. The "**WiseHealthKids, Family Military Link or WiseHealth-EDU Site**" means the site that has its primary home page identified by the URL WiseHealthKids.com, MilitaryFamilyLink.com or WiseHealth-EDU.com, and "**site**" means a World Wide Web site. "**Your site**" means any site that you link to the WiseHealth, Inc. Sites (and which you will identify in your Program application).

## 1. Enrollment in the Program

To begin the enrollment process, you will submit a complete Program application. We will evaluate your application in good faith and will notify you of its acceptance or rejection. We may reject your application if we determine (in our sole discretion) that your site is unsuitable for the Program.

Unsuitable sites include, but are not limited to, those that:

- promote sexually explicit materials
- promote violence
- promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age
- promote illegal activities
- otherwise violate intellectual property rights.

By participating in the Program you agree that you will not engage in any such activities. If we reject your application, you are welcome to reapply to the Program at any time. You should also note that if we accept your application and your site is thereafter determined (in our sole discretion) to be unsuitable for the Program, we may terminate this Agreement. Participation in the Program is limited to parties that lawfully can enter into and form contracts under applicable law. For example, minors are not allowed to participate in the Program.

## 2. Links on Your Site

Once you have been notified that your site has been accepted into the Program, we will provide you with a unique referral code we will use to track subscriptions made with your referral code. We will also grant you a revocable, non-exclusive, worldwide, royalty-free license for the duration of the term of this Agreement, solely for purposes of facilitating referrals from your site to the WiseHealth, Inc. sites. We will provide you with guidelines and graphical artwork to use in linking to the various WiseHealth, Inc. Site(s) or pages. Except for the license granted under this Section 2, you do not obtain any rights under this Agreement in any intellectual property, including, without limitation, any intellectual property with respect to the links, link formats, technical specifications, guidelines or graphical artwork referenced above, or with respect to the WiseHealth, Inc. domains. You also acknowledge that as a participant in the Program, we may from time to time send you email updates about the Program. By participating in the Program, you consent to our sending you these email updates.

### **3. Order/Registration Processing**

We will process registrations placed by customers who follow links from your site to any of the WiseHealth, Inc. sites. We reserve the right to reject orders that do not comply with any requirements that we periodically may establish. We will be responsible for all aspects of order processing and fulfillment. Among other things, we will process registrations, any applicable e-commerce orders and handle customer service.

### **4. Policies and Pricing**

Customers who buy products through this Program will be deemed to be our customers. Accordingly, all of our rules, policies, and operating procedures concerning customer orders, customer service, and product sales will apply to those customers. We may change our policies and operating procedures at any time. For example, we will determine the prices to be charged for products sold under this Program in accordance with our own pricing policies. Product prices and availability may vary from time to time.

### **5. Identifying Yourself as an Associate**

**You may issue any press release with respect to this Agreement or your participation in the Program providing that we have pre-approved the press release.**

We will make available to you graphic images that identify your site as a Program participant. You may display these graphics in your marketing materials as well as on your site. We may modify the text or graphic image of this notice from time to time.

### **6. Limited License**

We grant you a nonexclusive, revocable right to use the graphic image and text described in Section 5 and such other text or images for which we grant express permission, solely for the purpose of identifying your site as a Program participant and to assist in generating Product registrations and/or applicable sales. You may not modify the graphic image or text, or any other of our images, in any way. We reserve all of our rights in the graphic image and text, any other images, our trade names and trademarks, and all other intellectual property rights. You agree to follow our Trademark Guidelines, as those guidelines may change from time to time. We may revoke your license at any time by giving you written notice.

### **7. Responsibility for Your Site**

You will be solely responsible for the development, operation, and maintenance of your site and for all materials that appear on your site. For example, you will be solely responsible for:

- the technical operation of your site and all related equipment
- the accuracy and appropriateness of materials posted on your site
- ensuring that materials posted on your site do not violate or infringe upon the rights of any third party (including, for example, copyrights, trademarks, privacy, or other personal or proprietary rights)
- ensuring that materials posted on your site are not defamatory or otherwise illegal
- ensuring that your site accurately and adequately discloses, either through a privacy policy or otherwise, how you collect, use, store, and disclose data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers.

We disclaim all liability for these matters. Further, you will indemnify and hold us harmless from all claims, damages, and expenses (including, without limitation, attorneys' fees and court costs) relating to the development, operation, maintenance, and contents of your site.

#### **8. Compliance with Laws**

As a condition to your participation in the Program, you agree that while you are a Program participant you will comply with all laws, ordinances, rules, regulations, orders, licenses, permits, judgments, decisions or other requirements of any governmental authority that has jurisdiction over you, whether those laws, etc. are now in effect or later come into effect during the time you are a Program participant. Without limiting the foregoing obligation, you agree that as a condition of your participation in the Program you will comply with all applicable laws (federal, state or otherwise) that govern marketing email, including without limitation, the CAN-SPAM Act of 2003 and all other anti-spam laws.

#### **9. Term of the Agreement**

The term of this Agreement will begin upon our acceptance of your Program application and will end when terminated by either party. Either you or we may terminate this Agreement at any time, with or without cause, by giving the other party written notice of termination. Upon the termination of this Agreement for any reason, you will immediately cease use of, and remove from your site, all links to the WiseHealth, Inc. sites, and all of our trademarks, trade dress, and logos, and all other materials provided by or on behalf of us to you pursuant hereto or in connection with the Program. You are eligible to earn referral fees only on sales that occur during the term and referral fees earned through the date of termination.

#### **10. Modification**

We may modify any of the terms and conditions contained in this Agreement, at any time and in our sole discretion, by posting a change notice or a new agreement on the WiseHealth, Inc. sites. Modifications may include, for example, changes in the scope of available referral fees, referral fee schedules, payment procedures, and Program rules. **IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING OUR POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON THE WISEHEALTH, INC. SITES WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE.**

#### **11. Relationship of Parties**

You and we are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement, whether on your site or otherwise, that reasonably would contradict anything in this Section.

#### **12. Limitation of Liability**

We will not be liable for indirect, special, or consequential damages (or any loss of revenue, profits, or data) arising in connection with this Agreement or the Program, even if we have been advised of the possibility of such damages.

#### **13. Disclaimers**

We make no express or implied warranties or representations with respect to the Program or any products sold through the Program (including, without limitation, warranties of fitness,

merchantability, noninfringement, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition, we make no representation that the operation of the WiseHealth, Inc. sites will be uninterrupted or error-free, and we will not be liable for the consequences of any interruptions or errors.

#### **14. Independent Investigation**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU UNDERSTAND THAT WE MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) SOLICIT CUSTOMER REFERRALS ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE WEB SITES THAT ARE SIMILAR TO OR COMPETE WITH YOUR WEB SITE. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

#### **15. Arbitration**

Any dispute relating in any way to this Agreement (including any actual or alleged breach hereof), any transactions or activities under this Agreement or your relationship with us or any of our partners shall be submitted to confidential arbitration in Anne Arundel County, Maryland, except that, to the extent you have in any manner violated or threatened to violate our intellectual property rights, we may seek injunctive or other appropriate relief in any state or federal court in the State of Maryland (and you consent to non-exclusive jurisdiction and venue in such courts) or any other court of competent jurisdiction. Arbitration under this agreement shall be conducted under the rules then prevailing of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. To the fullest extent permitted by applicable law, no arbitration under this Agreement shall be joined to an arbitration involving any other party subject to this Agreement, whether through class arbitration proceedings or otherwise.

#### **16. Miscellaneous**

This Agreement will be governed by the laws of the United States and the State of Maryland, without reference to rules governing choice of laws. You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such provision or any other provision of this Agreement.